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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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12 MICHAEL MENDIOLA,  
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Petitioner,

15 vs.  
16 W.J. SULLIVAN, Warden,  
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19 Respondent.  
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CASE NO. 07-CV-0130 W (JMA)

22 ORDER ADOPTING REPORT  
23 AND RECOMMENDATION  
24 AND DISMISSING WITH  
25 PREJUDICE HABEAS CORPUS  
PETITION (Doc. No. 24)

26 On January 19, 2007 Petitioner Michael Mendiola ("Petitioner"), a state prisoner  
27 proceeding *pro se*, filed a habeas corpus petition seeking relief under 28 U.S.C. § 2254.  
28 (Doc. No. 1.) On February 6, 2007 the Court dismissed the petition without prejudice  
and with leave to amend. (Doc. No. 3.) On April 26, 2007 (*nunc pro tunc* to March  
19, 2007) Petitioner filed a First Amended Petition ("Petition"), which only argued a  
single ground for relief. (Doc. No. 10.) On July 5, 2007 Respondent W.J. Sullivan  
("Respondent") filed a motion to dismiss, apparently against the original petition. On  
November 29, 2007 the Court adopted Magistrate Judge Adler's Report and  
Recommendation that Respondent's motion be denied as moot, and denied  
Respondent's motion to dismiss. (Doc. No. 20.) Magistrate Judge Adler then ordered  
Respondent to answer or move to dismiss the amended Petition. (Doc. No. 21.)  
Magistrate Judge Adler also ordered Petitioner to file an opposition or traverse,  
depending on Respondent's course of action. (*Id.*)

1       On January 16, 2008 Respondent filed an Answer to the amended Petition.  
 2 (Doc. No. 22.) Petitioner did not file a traverse, nor did he ask for an extension of time  
 3 in which to do so.

4       On April 24, 2008 Magistrate Judge Adler issued his Report and  
 5 Recommendation ("Report") recommending that Petitioner's amended Petition be  
 6 dismissed with prejudice. (Doc. No. 19.) The Report also ordered that any objections  
 7 were to be filed by May 27, 2008, and any replies filed by June 10, 2008. To date, no  
 8 objections have been filed by either party, nor has there been any requests by either  
 9 party for additional time in which to file any objections.

10      A district court's duties concerning a magistrate judge's report and  
 11 recommendation and a respondent's objections thereto are set forth in Rule 72(b) of  
 12 the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). When no objections  
 13 are filed, the district court is not required to review the magistrate judge's report and  
 14 recommendation. See United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir.  
 15 2003) (holding that 28 U.S.C. 636(b)(1)(c) "makes it clear that the district judge must  
 16 review the magistrate judge's findings and recommendations *de novo if objection is made,*  
 17 but not otherwise") (emphasis in original); Schmidt v. Johnstone, 263 F. Supp. 2d 1219,  
 18 1226 (D. Arizona 2003) (concluding that where no objections were filed, the District  
 19 Court had no obligation to review the magistrate judge's Report). This rule of law is  
 20 well established within the Ninth Circuit and this district. See Wang v. Masaitis, 416  
 21 F.3d 992, 1000 n. 13 (9th Cir. 2005) ("Of course, *de novo* review of a R & R is *only*  
 22 required when an objection is made to the R & R.") (emphasis added) (citing Reyna-  
 23 Tapia, 328 F.3d 1121); Nelson v. Giurbino, 395 F. Supp. 2d 946, 949 (S.D. Cal. 2005)  
 24 (Lorenz, J.) (adopted Report without review because neither party filed objections to  
 25 the Report despite the opportunity to do so, "accordingly, the Court will adopt the  
 26 Report and Recommendation in its entirety."); see also Nichols v. Logan, 355 F. Supp.  
 27 2d 1155, 1157 (S.D. Cal. 2004) (Benitez, J.).

28      The Court therefore accepts Judge Adler's recommendation, and **ADOPTS** the

1 Report in its entirety. For the reasons stated in the Report, which is incorporated  
2 herein by reference, the Court **DISMISSES WITH PREJUDICE** Petitioner's amended  
3 Petition. (Doc. Nos. 10, 24.)

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6 **IT IS SO ORDERED.**

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9 DATE: July 1, 2008

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HON. THOMAS J. WHELAN  
United States District Court  
Southern District of California